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IN THE

Supreme Court of the United States

FEBRUARY TERM, 1942

No. 936

EDWARD L. CORBETT,
Petitioner,

vs.

LILLIAN J. HALLIWELL,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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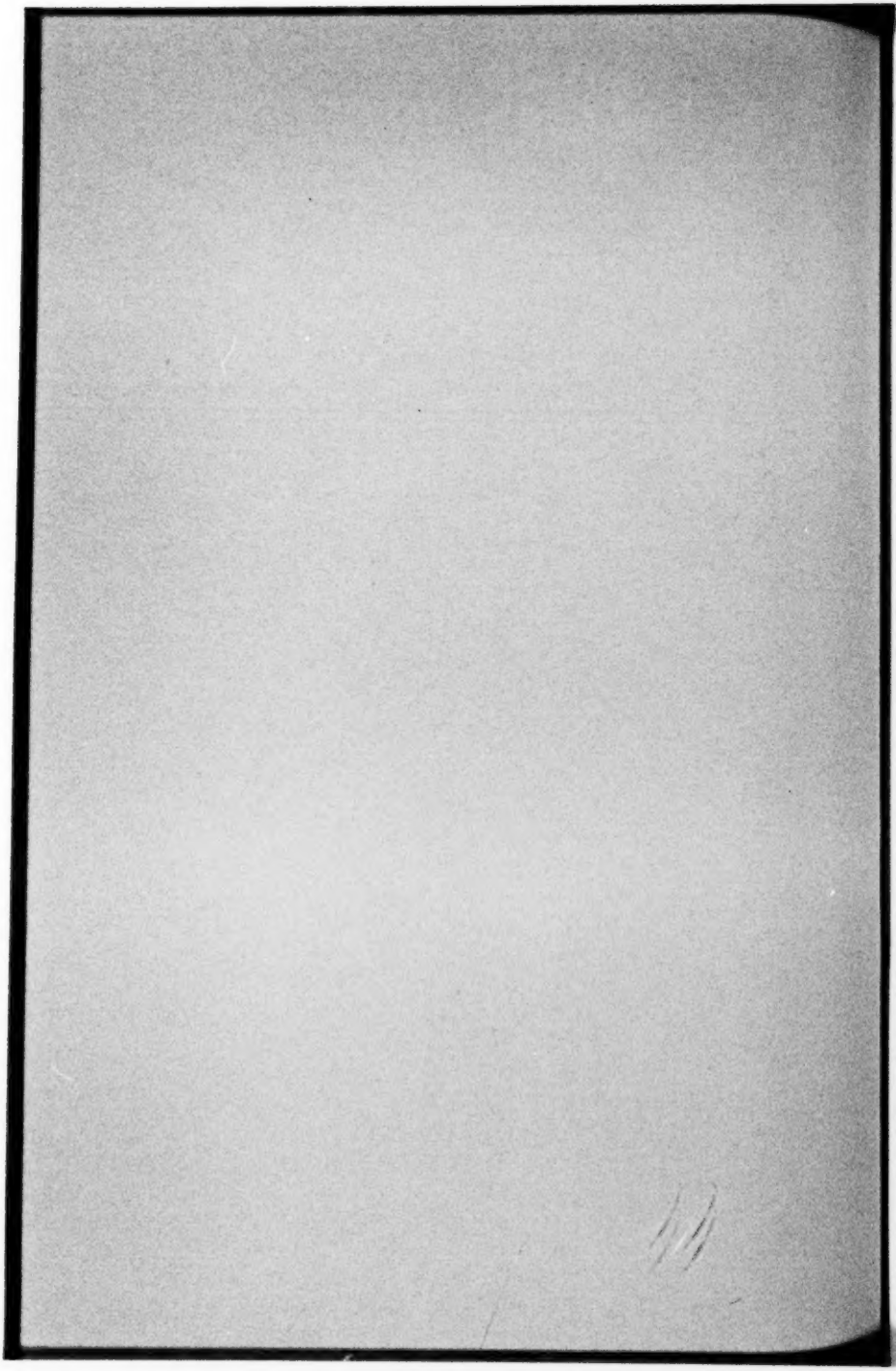

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I.

THE OPINION OF THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Second Circuit was a Per. Curiam opinion which has not as yet been officially reported.

The opinion and the corrected opinion appear in the Record. (R. 256 to 259).

II.

JURISDICTION

The Petitioner relies on Rule 38, paragraph 5 (b) of the Supreme Court Rules, as the ground for invoking this Court to grant his petition and states that the Court below has rendered a decision in direct conflict with a decision of another Circuit Court of Appeals on the same matter, to wit:—the Circuit Court of Appeals for the Seventh District (Oregon).

It is submitted that the only questions involved in this present case, throughout the trial in the District Court and in the Appeal in the United States Circuit Court of Appeals for the Second Circuit, were, as stated in the opinion of the latter Court, *questions of fact* and the sufficiency of the evidence to support the findings and judgment.

The facts in the case at bar are entirely different from the facts in the case of Hughes vs. Dundee Mortgage and Trust Company reported August 8, 1884, in 21 Fed. 169, and relied upon by the Petitioner in his Brief as being a decision on the same matter.

The Petitioner has no valid and proper reason for requesting this Court to grant his petition for review and the Court should not take jurisdiction of the same.

III.

STATEMENT OF THE CASE

This was an action at law claiming $10,000.00 damages, instituted by the plaintiff in the District Court of the United States for the District of Connecticut against the defendant, a resident of Connecticut, for alleged legal services rendered to her by the plaintiff from October 1, 1937, to about February 1, 1938. The action was tried to the Court without a jury.

The Petitioner in his Brief (pp. 7, 8, 14. 15, 16) sets forth certain portions of the evidence which appeared in the case and states that the Court below from this evidence should have rendered judgment for the plaintiff.

The evidence, both oral and written, throughout the entire trial, was conflicting. There was no express agreement to hire the plaintiff by the defendant and the sole issue in the case was whether or not from all the surrounding facts and circumstances there was an implied agreement or promise to compensate the plaintiff for his alleged services.

The trial Judge found after making detailed findings of fact (R. 243-251) that there was no implied promise or agreement to compensate the plaintiff and the plaintiff was not entitled to compensation from the defendant. (R. 251).

The United States Circuit Court of Appeals for the Second Circuit in a Per. Curiam decision (R. 256-259)

affirmed the judgment of the trial Judge, stating that the only question raised by the Appeal was the sufficiency of the evidence to support the findings and judgment, that it would serve no purpose to review the evidence, and it was sufficient to say that they had examined the record and were satisfied that the findings are not "clearly erroneous", but are supported by *substantial evidence.*

Without going into the evidence, a few facts in the Record should be brought to the Court's attention so that it can readily be seen that there was considerable conflict in the evidence and that the sole question involved was one of fact to be determined therefrom.

On June 28, 1938, the plaintiff, without notice to the defendant of any nature, sued the defendant's husband in the New York Courts for $10,000.00 for the very services which are the subject matter of this present suit, and upon the dismissal of that action in New York and without ever having billed the defendant for services and without notice brought this action in October, 1939. (R. 90, 91, 92, 177, 196, 239, 242).

A further examination of the Record and the findings of fact by the trial Judge (R. 243-251) will disclose an abundance of evidence to justify the judgment entered against the plaintiff.

IV.

ARGUMENT

POINT I.

Findings of Fact by a Trial Court should not be set aside by Appellate Court if supported by evidence.

The evidence presented by the plaintiff conflicts in many essentials with that presented by the defendant, and in conflicting evidence, it is the province of the trial court to determine facts and such a determination by the Court supported by subordinate facts found which are based on the evidence or reasonable inferences therefrom, will not be interfered with by the Appellate Court. Kudla vs. Pignone, 119 Conn. 204; 174 Atl. 469; Borden vs. Town of Westport, 112 Conn. 152; 151 Atl. 512; DeToro vs. Cannata, 114 Conn. 712; 157 Atl. 270; Tilden vs. Century Realty Co. 112 Conn. 439; 152 Atl. 707.

The trial court in coming to its conclusions was permitted to draw inferences from the evidence and conclusions of the trial court which depend largely upon an inferential determination of the intentions and expectations of the parties, are ones of fact and should not be disturbed by the Appellate Court if reasonably supported by the evidence. Baretz vs. Steinmetz, 102 Conn. 504, 508; 117 Atl. 547; 1 Williston Contracts, Section 36.

POINT II.

Findings of Fact in which both Courts below concur will not be reviewed by the Supreme Court of the United States unless there is clear error.

The trial Judge found the facts in this case (R. 243-251) based on substantial evidence and on appeal to the United States Circuit Court of Appeals for the Second Circuit, the Appellate Court affirmed the trial Judge's judgment because his judgment was based on very substantial evidence and facts found in accordance with F. R. C. P. Rule 52 (a) which states that: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses"; the Appellate Court properly and rightfully refused to set aside these facts and findings.

It is a well established rule when both courts below decide questions of fact against the Petitioner that the Supreme Court of the United States accepts the findings in which the two lower courts concur, unless clear error is shown. Texas & N. O. R. Co. vs. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548; 74 L. ed. 1034, 1040; Stuart vs. Hayden, 169 U. S. 1, 14; 42 L. ed. 639, 643; Texas & P. R. Co. vs. Railroad Commission, 232 U. S. 338; 58 L. ed. 630; Washington Securities Co. vs. United States, 234 U. S. 76, 78; 58 L. ed. 1220, 1222; Bodkin vs. Edwards, 255 U. S. 221, 223; 65 L. ed. 595, 596. The Petitioner has failed to show any error that would warrant this Court in disturbing the findings and conclusions of the lower Courts.

CONCLUSION

The plaintiff in the trial of the case attempted by his testimony to establish a relationship of attorney and client with the defendant. The testimony of the defendant and the defendant's witnesses established that no such relationship existed, and the only relationship existing between the parties was social and friendly and in no way business or professional.

The trial court observed the plaintiff and the defendant on the witness stand as well as all the other witnesses and was in a position to determine the truth or falsity of their testimony. The trial court determined that the defendant and her witnesses told the truth and based his judgment thereon.

On pages 230 to 239 of the Record appears testimony of the plaintiff given in answer to questions asked by the trial court. This testimony alone, shows conclusively that the plaintiff's evidence could not be relied upon in so far as its truth and accuracy was concerned and the trial court was warranted in disregarding all the plaintiff's statements which were contrary in any way to those made by the defendant and her witnesses.

Dealings between attorney and client involve such special trust and confidence and require such a degree of good faith and mutual understanding, particularly where there is intellectual inequality and comparative inexperience on the part of the client, that every doubt arising from the relationship will be resolved in the

client's favor. The burden is not upon the client to establish fraud and imposition, but upon the attorney to show fairness, adequacy and equity. McKnight vs. Gizzi 107 Conn. 229, 234, 235; 140 Atl. 116; Mills vs. Mills 26 Conn. 213, 219; Morrison vs. Smith 130 Ill. 304, 316, 23 N. E. 241; Ross vs. Payson 166 Ill. 349, 43 N. E. 399.

In the trial court the only issue in question was one of fact. The trial court found the facts in the defendant's favor and based on those facts entered judgment for the defendant. The lower Appellate Court affirmed the judgment of the trial court, stating that there was substantial evidence to support the judgment and there no error.

The Petitioner now asks this Court to set aside facts and findings based on conflicting evidence and found in detail by the trial court and later affirmed by the lower Appellate Court. In other words, the Petitioner wants this Court to substitute his finding of fact for the real finding made by the trial Judge.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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